

ANNIE SOPLU

IBLA 75-421

Decided September 10, 1975

Appeal from Bureau of Land Management decision rejecting Native allotment application F 16321.

Affirmed as modified.

1. Alaska: Native Allotments

Lands in the Arctic National Wildlife Range may not be made available for Native allotment unless the allotment applicant initiated substantial use and occupancy more than five years prior to the withdrawal of the land.

2. Alaska: Native Allotments -- Applications and Entries: Amendments

Where an Alaska Native Allotment applicant pending in the Department on December 18, 1971, is later amended to include new or additional lands, the amendment to the application will not be considered as timely filed and will be rejected.

APPEARANCES: William D. Rives, Esq., Seattle, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

[1] Annie Soplu appeals from the rejection of her application F 16321 for allotment of three widely separated tracts of land in the Arctic National Wildlife Refuge. Her application states that she began seasonal use and occupancy of these lands in July 1939. The refuge was created from land which was originally withdrawn by Public Land Order No. 82, effective February 3, 1943. Her application was rejected for the stated reason that she could not have completed the five years' substantial use and occupancy necessary to

perfect her claim to these lands prior to the time they were withdrawn for the use of the United States.

On appeal she asserts, in effect, that the requirement that she complete five years of qualifying use and occupancy prior to closure of the land is invalid. This argument has been advanced in many similar appeals and has been consistently rejected by this Board. Herman S. Rexford, 22 IBLA 20 (1975); Henry R. Nashoopuk, 21 IBLA 116 (1975); Thomas Akootchook, 17 IBLA 345 (1974); Christian G. Anderson, 16 IBLA 56 (1974); cf. Herman Joseph, 21 IBLA 199 (1975).

[2] However, there is another, equally compelling reason, not addressed in the decision below, which mandates the rejection of appellant's application. It was filed, presumably, with the Bureau of Indian Affairs in 1970, although it was not received and filed in the Fairbanks Land Office until March 22, 1972. ^{1/} The authority for the application, of course, was the Native Allotment Act of May 17, 1906, as amended, 43 U.S.C. §§ 270.1 et seq.; repealed, 43 U.S.C. § 1617 (Supp. II) (1972). As originally filed, the application described 40 acres on Barter Island, T. 8 N., R. 33 E., U.M. However, by memorandum dated March 16, 1973, the Realty Branch of the Bureau of Indian Affairs, Fairbanks, sought to amend the application by adding three separate 40-acre tracts in three different townships to the tract on Barter Island, thus making the application embrace 160 acres in four townships. ^{2/} The Fairbanks Land Office complied with the request and amended the application by adding the three tracts to the original Barter Island tract. In doing so, the Barter Island tract was designated Parcel A, and the other three tracts were designated Parcels B, C, and D, respectively.

On February 5, 1974, the applicant formally withdrew her application to the extent that it covered Parcel A, the original Barter Island tract, leaving only the other three. But Parcels B, C, and D had been added to the application long after the repeal of the Native Allotment Act. Where an application under that Act was pending in the Department at the time the Act was repealed, and it is amended after December 18, 1971 (the date of repeal), to include new or additional lands, the amendment will not be

^{1/} In point of fact there is nothing in the record to show when it was filed with BIA. We simply assume that it was timely filed for the sake of the discussion which follows.

^{2/} Annie Soplu did not file an amended application, nor is there anything in the record to show that she authorized the BIA to amend her application, or that she was even aware of the amendment at that time.

considered as timely filed, and will be rejected. Raymond Paneak, 19 IBLA 68 (1975). We conclude that there is no timely filed application before us.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Newton Frishberg
Chief Administrative Judge

I concur in result:

Martin Ritvo
Administrative Judge

